



U.S. Citizenship
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FILE:

WAC 04 175 52270

Office: CALIFORNIA SERVICE CENTER

Date: MAY 09 2006

IN RE:

Petitioner:
Beneficiary

PETITION:

Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability Pursuant to Section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Chief
Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the employment-based immigrant visa petition. The matter is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks to classify the beneficiary pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2), as an alien of exceptional ability in the arts. The petitioner owns an art gallery, at which the petitioner seeks to display the beneficiary's paintings. The petitioner asserts that an exemption from the requirement of a job offer, and thus of a labor certification, is in the national interest of the United States. The director found that the petitioner has not established that an exemption from the requirement of a job offer would be in the national interest of the United States.

Section 203(b) of the Act states in pertinent part that:

(2) Aliens Who Are Members of the Professions Holding Advanced Degrees or Aliens of Exceptional Ability. --

(A) In General. -- Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of Job Offer.

(i) . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

In denying the petition, the director did not state whether or not the beneficiary qualifies for classification as an alien of exceptional ability in the arts. Because we are affirming the director's finding that the beneficiary does not qualify for the waiver, it would serve no useful purpose to instruct the director to issue a finding regarding the exceptional ability claim; in the absence of a waiver or an approved labor certification, the petition could not be approved even if the director made a finding of exceptional ability. The sole issue raised in the director's decision is whether the petitioner has established that a waiver of the job offer requirement, and thus a labor certification, is in the national interest.

Neither the statute nor the pertinent regulations define the term "national interest." Additionally, Congress did not provide a specific definition of "in the national interest." The Committee on the Judiciary merely noted in its report to the Senate that the committee had "focused on national interest by increasing the number and proportion of visas for immigrants who would benefit the United States economically and otherwise. . . ." S. Rep. No. 55, 101st Cong., 1st Sess., 11 (1989).

Supplementary information to regulations implementing the Immigration Act of 1990 (IMMACT), published at 56 Fed. Reg. 60897, 60900 (November 29, 1991), states:

The Service [now Citizenship and Immigration Services] believes it appropriate to leave the application of this test as flexible as possible, although clearly an alien seeking to meet the [national interest] standard must make a showing significantly above that necessary to prove the “prospective national benefit” [required of aliens seeking to qualify as “exceptional.”] The burden will rest with the alien to establish that exemption from, or waiver of, the job offer will be in the national interest. Each case is to be judged on its own merits.

Matter of New York State Dept. of Transportation, 22 I&N Dec. 215 (Comm. 1998), has set forth several factors which must be considered when evaluating a request for a national interest waiver. First, it must be shown that the alien seeks employment in an area of substantial intrinsic merit. Next, it must be shown that the proposed benefit will be national in scope. Finally, the petitioner seeking the waiver must establish that the alien will serve the national interest to a substantially greater degree than would an available U.S. worker having the same minimum qualifications.

It must be noted that, while the national interest waiver hinges on prospective national benefit, it clearly must be established that the alien’s past record justifies projections of future benefit to the national interest. The petitioner’s subjective assurance that the alien will, in the future, serve the national interest cannot suffice to establish prospective national benefit. The inclusion of the term “prospective” is used here to require future contributions by the alien, rather than to facilitate the entry of an alien with no demonstrable prior achievements, and whose benefit to the national interest would thus be entirely speculative.

In a letter dated May 27, 2004, the petitioner states:

[The beneficiary] is known for her excellent works in mixing the new ideas with the traditional Iranian themes in painting. Her oil paintings are extremely good and presentable. Based on my experience I believe when her line of works is presented to the public they will receive a lot of admiration and attention. I also believe that the demand for her work will make her creative works economically viable.

In a statement submitted with the initial filing of the petition, counsel states:

While still a college student . . . [the beneficiary] was already well known as a new talent in painting in Iran. Her achievements were greatly admired by her university professors. Her artistic emphasi[s] of mixing new ideas with the old Iranian traditional painting which [was] mostly used in creating Persian carpets and also used in bea[u]tifying building[s] by painting on tiles helped her to make her name in the [field] and attracted the interests and admiration of her peers and general public alike. Today, [the beneficiary] is a well known and respected name in painting in Iran. Several exhibitions of her works have been set up in Tehran, Iran, [and] articles about her works appeared in the Iranian newspapers. She published two books

which are . . . a collection of her articles about Iranian traditional art as well as other articles about the painting.

Counsel states that the beneficiary “has been frequently interviewed by the cultural sections of Iranian newspapers as an expert in the field of painting. At this time we have only access to three samples of publications of which two have been translated and attached.” We can consider only the translated articles that the petitioner has submitted; additional materials that are alleged to exist, but which the petitioner has not entered into evidence, can have no weight in this proceeding. Counsel’s claim that additional articles exist does not document their existence. The assertions of counsel do not constitute evidence. *Matter of Laureano*, 19 I&N Dec. 1, 3 (BIA 1983); *Matter of Obaighena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980).

The first translated article, published in *Ettelaat Daily*, promotes a 1998 exhibition at [REDACTED] showing the work of the beneficiary and two other artists. The article offers general assertions about modern art, but says nothing specific about the beneficiary’s work. The article’s only discussion of the beneficiary consists of her name and the observation that she and the other artists all “graduated from Islamic Azad University in the field of art.”

The second translated article, from the “Culture and Art” section of the newspaper *Hambastegi*, is an interview with the beneficiary. The interview does not show that the beneficiary stands out among artists or that it is in the national interest of the United States to ensure the beneficiary’s continued presence in the United States.

The petitioner submits a translated photocopy of the publishing information from a book by the beneficiary, with the title translated as *Eastern Depicts – Iranian Paintings*. The publishing information indicates that 2,200 copies were printed. The record contains no other information about the book. Its very existence, by itself, does not show that the beneficiary qualifies for a national interest waiver; otherwise, any alien artist desiring a waiver could simply arrange for the private printing of a few thousand copies of such a book. The petitioner has not shown what impact, if any, this book has had on the arts where it was published.

The record contains copies of the multi-volume *Collection of Artistic Essays* by the beneficiary. The *Essays* are submitted as bound books, but there is no evidence that the books were published. The illustrations appear to be computer-printed, and every page is printed only on one side. Several of the illustrations are distorted, and others are enlargements of low-resolution digital images. There is no copyright or ISBN information and no publisher is identified. Thus, the *Essays* appear to have been printed by computer and privately bound.

The petitioner submits letters and promotional materials showing that the beneficiary showed her work at three exhibitions between 1999 and 2002 at [REDACTED]

[REDACTED] A letter from the [REDACTED] thanks the beneficiary for her work on the “Judges’ Committee in the first Nationwide Festival of New Ideas (Free-Style and Painting Category in the year 2000-01).” The record offers no other information about these events to shed further light on their significance.

The director instructed the petitioner to submit additional evidence to meet the guidelines set forth in *Matter of New York State Dept. of Transportation*. The director also requested “testimonial letters . . . from **significant** organizations which have had a chance to review the beneficiary’s background, reputation and qualifications” (director’s emphasis). The director named several candidate organizations, such as the

Counsel states that the beneficiary’s “activity is an area of substantial [redacted] based on the education value of her work. . . . There is no doubt that she represents a new look in the art of painting that is rooted in her gender as developed in a unique cultural economical backgrounds” (sic). Counsel’s argument is not the most persuasive that could be offered. Nevertheless, the construction of the statute clearly indicates that aliens of exceptional ability in the arts are eligible to request the waiver, and the beneficiary works in a mainstream art form (painting). It would be difficult, within this statutory context, to deny that painting lacks substantial intrinsic merit.

Counsel asserts that the beneficiary’s work has national scope because “[a]n artist with exceptional ability will influence the current trends of his/her line of work.” This is a conjectural and general assertion. An artist with national exposure has the opportunity to have a national impact through his or her influence, but so few artists have such broad influence that we cannot conclude that national scope is intrinsic to the beneficiary’s occupation. At best, the potential for national scope exists. Thus, because it is impossible to say with certainty what will happen in the future, the best gauge of the scope of the beneficiary’s work is the impact and influence of the beneficiary’s past work. If the beneficiary’s work has had national impact in the past, it is not unreasonable to foresee further impact on the same scale. If, on the other hand, the beneficiary’s work has had no such impact in the past, then it is pure speculation to assert that her work will eventually achieve national importance.

Counsel states “there is no comparable US worker” to the beneficiary because “each artist is unique in his/her line of work.” This assertion, however, does nothing to establish that the beneficiary stands apart from other artists to a sufficient extent that she warrants the special benefit of a national interest waiver.

The petitioner submits several letters which counsel deems “experts attestations” (sic). Artist Sadegh Aref states:

I had the opportunity to meet [the beneficiary] and see her work for the first time at her booth in [redacted] (a yearly gathering in Southern California where Iranian artists exhibit their work, among other activities) where she was experiencing a phenomenal reception from the visitors. Her paintings were exceptional. Her work is certainly well above the standard that I had seen from the new generation of the Iranian artists. . . .

Since most of the displayed works were created while in the USA it seems that the quality and richness of her artistic creation has not only improved since her taking residence in the US, but has also continued to evolve in both breadth and depth because of her exposure to the new cultural norms.

The petitioner offers a new letter in support of the beneficiary. This letter contains sentences that match, word for word, excerpts from [REDACTED] letter. It is not clear who actually wrote these letters.

The next letter is jointly signed by [REDACTED]

The letter reads, in part:

We had the opportunity to meet with this exceptionally talented painter during her latest exhibition at [the petitioner's] Gallery in La Jolla, CA on May 13, 2005, where her work was received with an overwhelming interest by the visiting art lovers. In addition to her inspiring paintings, [the beneficiary] successfully demonstrated that she has made a significant contribution to her field through her superbly researched and collected three-volume publications.

It will give us, as part of the artistic community of the United States, a great sense of pleasure to be granted the chance to embrace this unique talent. We firmly believe that, despite the difficulties facing any female artists in Iran, she has achieved an extraordinary level of mastery in her artistic creations, we above [*sic*] what we have seen from any her generation [*sic*] of artists.

Artist and gallery owner [REDACTED] states:

In spite of the difficulties that a female artist faces in Iran's today society [*sic*], [the beneficiary] has transcended to a level of greatness that every artist dreams to approach.

The quality and richness of her artistic creation has not only paused since her taking residence in the US, but has also continued to evolve in both breadth and depth because of her exposure to the new culture in the Land of Opportunities. . . .

Through studying her books, I have come to the realization that [the beneficiary] has also performed an outstanding research on the subject of architecture and the influence of its art form on the economy of a society. Her research in this field also demonstrates the significance of ancient architecture in the understanding of arts in today's modern societies and its importance in attracting admirers of this kind of artistic creation to those lands with an ancient history.

In my professional opinion, [the beneficiary] is one of the few masters who is capable of demonstrating a global view of similarities and she presents a universal model to the viewer of her work and creates an atmosphere where an artistic thought[t] comes to being.

[REDACTED] vice president of [REDACTED] California, asserts that the beneficiary had received "[e]xtensive coverage in the Iranian press about her work," although Kavey

Abrishami did not become aware of the beneficiary's art until the petitioner provided samples of her work in September 2004. The letter contains several unsubstantiated claims, such as the assertion that the beneficiary's "books about the background and evolution of carpet design" are now "used in the Art Colleges in Iran." As noted above, most of the books in the record of proceeding appear to be self-produced and show no evidence of publication.

[REDACTED] president of Iranian-American Visual Artists, states that the beneficiary "is a recognized Iranian artist of twenty years experience who has shown in galleries both in Iran and in the United States. She has written books on design, Persian carpets, social injustice and the suffering of Iranian women under the strict Islamic rule in Iran." This witness relies mostly on broad, general assertions, some of which are not substantiated by first-hand evidence.

Several of the above witnesses state that they first saw the beneficiary's work at an exhibition at the petitioner's gallery nearly a year after the petition's filing date. Their letters, therefore, are not indicative of the beneficiary's impact or reputation as of the date of filing. The beneficiary of an immigrant visa petition must be eligible at the time of filing; subsequent developments cannot cause the beneficiary to become eligible at a future date. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg. Comm. 1971).

Furthermore, the witnesses are all based in the La Jolla area, suggesting that the impact of the beneficiary's work has been mostly, perhaps entirely, local in nature.

The petitioner submits an article from the *La Jolla Village News*, indicating that the beneficiary will be one of four artists showing her work "in an art show opening May 13 [2005]" at the petitioner's gallery. This show occurred almost a year after the petitioner filed the petition. Also, this brief mention in a local newspaper does not demonstrate that the media has taken significant notice of the beneficiary's work. The article mentions the beneficiary only once, identifying her only by her first name; the same article devotes four paragraphs to "a 10-year-old poet and painter" who "will visit La Jolla as part of a national tour." The title of the article, "10-year-old artist visits the Village," does not mention the beneficiary or any other local artist. The group show that included the beneficiary's work is mentioned among other "related art news" at the end of the piece.

The director denied the petition, stating that the beneficiary's reputation and impact appear to be limited to parts of southern California, and concentrated among Iranian-American artists within that limited area. The director observed that the petitioner submitted nothing to address the director's request for expert opinions from national arts organizations. With regard to the materials from the organization called Iranian-American Visual Artists, the director noted that the organization is based in southern California and that a web search using the Google search engine failed to yield any mention of that organization at all, which called into question the scope of that organization's reach. The director concluded that the beneficiary's work lacks national scope and that the petitioner has failed to show that the beneficiary would benefit the United States to a degree that would merit the special benefit of a national interest waiver.

On appeal, counsel states:

It is now a proven fact that the American-Iranian population [is] concentrate[d] in California. . . . It is very natural that one establishes a fine art association where the majority of its **audiences reside**. **While such contention might have some merit two decade[s] ago**, considering the new technology that puts everything in the view of the audiences nationwide it really does not matter where you are physically located so long as presentation of the fine arts are concern[ed].

Counsel does not identify “the new technology,” but in context “the new technology” appears to be the World Wide Web, which did not exist “two decade[s] ago.” There is some merit to the assertion that, using the web, an organization can establish an international presence from virtually anywhere. This, however, does not refute the director’s observation that Iranian-American Visual Artists does not appear to have established any presence on the web. Counsel never directly asserts that the director erred in that assertion.

Counsel notes that the petitioner “provided USCIS with evidence of the websites of [redacted] and Kaveh Abrishami showing that their works are presented not [only] in the US art galleries but presented internationally as well. We respectfully submit that their address [in] Southern California does not disqualif[y] them as” witnesses. The reputations of [redacted] are not at issue here. The fact that they have shown their work internationally merely serves to contrast their own levels of achievement with that of the beneficiary. This does not refute the director’s core finding that, in the United States, the petitioner’s reputation is largely limited to artists (primarily Iranian artists) in southern California.

Counsel asserts that the petitioner’s gallery “receives interests from all over the world inquiring about the works of its associated painters.” The record offers no corroboration for this claim. Tellingly, the record also offers no evidence that the petitioner has sold significant quantities of the beneficiary’s work relative to comparable work by other artists. A working relationship with an art gallery is a mark of a successful artist, but to qualify for a national interest waiver, the petitioner must do more than simply show its willingness to display and sell the beneficiary’s paintings.

The petitioner has shown that the beneficiary has won some admirers in southern California, particularly in the Iranian-American community. The petitioner has not, however, demonstrated that the beneficiary stands out from other artists to such an extent that it is in the national interest to approve a petition on her behalf without an approved labor certification. We note that the director did not specifically find that the petitioner has shown that the beneficiary qualifies for classification as an alien of exceptional ability; from the evidence available, it is not clear that the AAO would have been able to affirm a favorable finding in that regard.

As is clear from a plain reading of the statute, it was not the intent of Congress that every person qualified to engage in a profession in the United States should be exempt from the requirement of a job offer based on national interest. Likewise, it does not appear to have been the intent of Congress to grant national interest waivers on the basis of the overall importance of a given profession, rather than on the merits of the individual alien. On the basis of the evidence submitted, the petitioner has not established that a waiver of the requirement of an approved labor certification will be in the national interest of the United States.

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

This denial is without prejudice to the filing of a new petition by a United States employer accompanied by a labor certification issued by the Department of Labor, appropriate supporting evidence and fee.

ORDER: The appeal is dismissed.